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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO JAVIER FRAIRE PEREZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72201

Agency No. A96-059-311

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 13, 2007^{**}

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

Francisco Javier Fraire Perez petitions this court for review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen based upon the ineffective assistance of his counsel.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The regulations provide that, absent certain exceptional circumstances, a motion to reopen “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.” *See* 8 C.F.R. § 1003.2(c)(2). This court, however, recognizes equitable tolling of deadlines on motions to reopen during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). The BIA correctly found that petitioner had not established that his prior counsel’s ineffective assistance prevented him from filing a timely motion to reopen with the BIA, because petitioner was aware of the BIA’s dismissal of his appeal in April 2005, when he filed a pro se petition for review with this court. Therefore, the BIA did not abuse its discretion in finding that it could not excuse petitioner’s untimeliness and in denying petitioner’s untimely motion to reopen. *See also* 8 C.F.R. § 1003.2(c)(2); *Iturribarria v. INS*, 321 F.3d at 897.

Accordingly, respondent’s unopposed motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial

07-72201

as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). *See also* 8 C.F.R. § 1003.2(c)(2); *Iturribarria v. INS*, 321 F.3d at 897.

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.